



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175755

PRELIMINARY RECITALS

Pursuant to a petition filed on July 22, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services regarding FoodShare benefits (FS), a hearing was held on September 14, 2016, by telephone. A hearing originally scheduled for August 18, 2016, was rescheduled at petitioner's request.

The issue for determination is whether petitioner is liable for an overpayment of FS benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Olivia Cherry
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Petitioner was an ongoing FS recipient in May, 2013. In May of 2013, petitioner commenced employment with [REDACTED]. This employment was not reported by petitioner timely; Renewals submitted in January, 2014, and April, 2015, omitted this disclosure.
3. The respondent determined that petitioner was overpaid FS benefits due to a failure on his part to timely notify the respondent of his new and continuing employment. The following claims were established:

Claim No.	Period	Amount
[REDACTED]	6/1/2013-1/1/2014	\$422.00
[REDACTED]	2/1/2014-9/1/2014	\$622.00
[REDACTED]	10/1/2014-9/1/2015	\$215.00

4. The respondent sent written notice to petitioner identifying the overpayments on June 15, 2016.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also *FoodShare Wisconsin Handbook*, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook*, App. 7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. *FoodShare Wisconsin Handbook*, 7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

There is absolutely no question, based upon the uncontroverted actual gross wage data, which was specifically and fully corroborated by the petitioner’s own pay stubs, that the agency has correctly calculated the petitioner’s corrected FS budget on review in the overpayments.

The only question is whether it was caused by agency error or client error. The former is only recoverable for one year retroactive from discovery, and the latter situation is recoverable for 6 years prior to discovery.

The petitioner testified that he does not recall why or how this went unreported, and stated that he thought that he sent in correct paperwork. However, the two renewals that occurred subsequent to commencement of his employment fail to corroborate any attempt to report this income. The petitioner did not accurately report his earned income, receiving far more in monthly income than was being budgeted in the period of June, 2013 – September, 2015.

Under this fact pattern, the Department has produced evidence in excess of the preponderance of the evidence standard demonstrating that the petitioner was overpaid \$1,259.00 of FoodShare benefits in the test period due to a client error in failing to report accurate income for a prolonged period of time. This overpayment determination must be sustained.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$1,259.00 of FoodShare benefits in the period of June, 2013 – September, 2015, due to client error.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of October, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 17, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability